

103D CONGRESS
1ST SESSION

H. R. 3651

To amend the Internal Revenue Code of 1986 with respect to the treatment of long-term care insurance policies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mrs. JOHNSON of Connecticut (for herself and Mr. THOMAS of California) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

A BILL

To amend the Internal Revenue Code of 1986 with respect to the treatment of long-term care insurance policies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the
5 “Long-Term Care Standards Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Section 1. Short title; table of contents.

TITLE I—TAX TREATMENT OF LONG-TERM CARE INSURANCE

Sec. 101. Treatment of long-term care insurance or plans.

- Sec. 102. Exclusion for benefits provided under long-term care insurance; inclusion of employer-provided coverage.
- Sec. 103. Credit for qualified long-term care premiums.
- Sec. 104. Qualified long-term services treated as medical care.
- Sec. 105. Tax reserve treatment of long-term care insurance contracts.
- Sec. 106. Exclusion from gross income for amounts withdrawn from individual retirement plans or 401(k) plans for long-term care insurance.
- Sec. 107. Tax treatment of accelerated death benefits under life insurance contracts.
- Sec. 108. Tax treatment of companies issuing qualified accelerated death benefit riders.
- Sec. 109. Qualified long-term care insurance contracts permitted to be offered in cafeteria plans.
- Sec. 110. Effective date.

TITLE II—ESTABLISHMENT OF FEDERAL STANDARDS FOR LONG-TERM CARE INSURANCE

- Sec. 201. Establishment of Federal standards for long-term care insurance.

1 **TITLE I—TAX TREATMENT OF** 2 **LONG-TERM CARE INSURANCE**

3 **SEC. 101. TREATMENT OF LONG-TERM CARE INSURANCE** 4 **OR PLANS.**

5 (a) GENERAL RULE.—Subpart E of part I of sub-
6 chapter L of chapter 1 of the Internal Revenue Code of
7 1986 is amended by inserting after section 818 the follow-
8 ing new section:

9 **“SEC. 818A. TREATMENT OF LONG-TERM CARE INSURANCE** 10 **OR PLANS.**

11 “(a) GENERAL RULE.—For purposes of this title—

12 “(1) a long-term care insurance contract shall
13 be treated as an accident or health insurance con-
14 tract,

15 “(2) amounts received under such a contract
16 with respect to qualified long-term care services shall

1 be treated as amounts received for personal injuries
2 or sickness, and

3 “(3) any plan of an employer providing quali-
4 fied long-term care services shall be treated as an
5 accident or health plan.

6 “(b) LONG-TERM CARE INSURANCE CONTRACT.—

7 “(1) IN GENERAL.—For purposes of this part,
8 the term ‘long-term care insurance contract’ means
9 any insurance contract issued if—

10 “(A) the only insurance protection pro-
11 vided under such contract is coverage of quali-
12 fied long-term care services and benefits inci-
13 dental to such coverage,

14 “(B) the maximum benefit under the pol-
15 icy (or certificate for a group long-term care in-
16 surance policy) for expenses incurred for any
17 day does not exceed \$200.00,

18 “(C) such contract does not cover expenses
19 incurred for services or items to the extent that
20 such expenses are reimbursable under title
21 XVIII of the Social Security Act or would be so
22 reimbursable but for the application of a de-
23 ductible or coinsurance amount,

24 “(D) such contract is guaranteed renew-
25 able,

1 “(E) such contract does not have any cash
2 surrender value, and

3 “(F) all refunds of premiums, and all pol-
4 icyholder dividends or similar amounts, under
5 such contract are to be applied as a reduction
6 in future premiums or to increase future bene-
7 fits.

8 “(2) SPECIAL RULES.—

9 “(A) CONTRACT MAY COVER MEDICARE
10 REIMBURSABLE EXPENSES WHERE MEDICARE
11 IS SECONDARY PAYOR.—Paragraph (1)(C) shall
12 not apply to expenses which are reimbursable
13 under title XVIII of the Social Security Act
14 only as a secondary payor.

15 “(B) REFUNDS OF PREMIUMS.—Para-
16 graph (1)(F) shall not apply to any refund of
17 premiums on surrender or cancellation of the
18 contract.

19 “(C) PER DIEM, ETC. PAYMENTS PER-
20 MITTED.—A contract shall not fail to be treated
21 as described in paragraph (1)(A) by reason of
22 payments being made on a per diem or other
23 periodic basis without regard to the expenses
24 incurred or services rendered during the period
25 to which the payments relate.

1 “(c) QUALIFIED LONG-TERM CARE SERVICES.—For
2 purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualified long-
4 term care services’ means:

5 “(A) necessary diagnostic, preventive,
6 therapeutic, and rehabilitative services, and
7 maintenance or personal care services, which—

8 “(i) are required by a chronically ill
9 individual in a qualified facility, and

10 “(ii) are provided pursuant to a plan
11 of care prescribed by a licensed health care
12 practitioner; or

13 “(B) payments made on a per diem or
14 other periodic basis without regard to the ex-
15 penses incurred or services rendered during the
16 period to which the payments relate and which
17 are payable to a chronically ill individual in a
18 qualified facility who is receiving treatment pur-
19 suant to a plan of care prescribed by a licensed
20 health care practitioner.

21 “(2) CHRONICALLY ILL INDIVIDUAL.—

22 “(A) IN GENERAL.—The term ‘chronically
23 ill individual’ means any individual who has
24 been certified by a licensed health care practi-
25 tioner as—

1 “(i)(I) being unable to perform (with-
2 out substantial assistance from another in-
3 dividual) at least 2 activities of daily living
4 (as defined in subparagraph (B)) for a pe-
5 riod of at least 90 days due to a loss of
6 functional capacity, or

7 “(II) having a level of disability simi-
8 lar (as determined by the Secretary in con-
9 sultation with the Secretary of Health and
10 Human Services) to the level of disability
11 described in subclause (I), or

12 “(ii) having a similar level of disabil-
13 ity due to cognitive impairment.

14 “(B) ACTIVITIES OF DAILY LIVING.—For
15 purposes of subparagraph (A), each of the fol-
16 lowing is an activity of daily living:

17 “(i) MOBILITY.—The process of walk-
18 ing or wheeling on a level surface which
19 may include the use of an assistive device
20 such as a cane, walker, wheelchair, or
21 brace.

22 “(ii) DRESSING.—The overall complex
23 behavior of getting clothes from closets
24 and drawers and then getting dressed.

1 “(iii) TOILETING.—The act of going
2 to the toilet room for bowel and bladder
3 function, transferring on and off the toilet,
4 cleaning after elimination, and arranging
5 clothes or the ability to voluntarily control
6 bowel and bladder function, or in the event
7 of incontinence, the ability to maintain a
8 reasonable level of personal hygiene.

9 “(iv) TRANSFER.—The process of get-
10 ting in and out of bed or in and out of a
11 chair or wheelchair.

12 “(v) EATING.—The process of getting
13 food from a plate or its equivalent into the
14 mouth.

15 “(3) QUALIFIED FACILITY.—The term ‘quali-
16 fied facility’ means—

17 “(A) a nursing, rehabilitative, hospice, or
18 adult day care facility (including a hospital, re-
19 tirement home, nursing home, skilled nursing
20 facility, intermediate care facility, or similar in-
21 stitution)—

22 “(i) which is licensed under State law,
23 or

1 “(ii) which is a certified facility for
2 purposes of title XVIII or XIX of the So-
3 cial Security Act, or

4 “(B) an individual’s home if a licensed
5 health care practitioner certifies that without
6 home care the individual would have to be cared
7 for in a facility described in subparagraph (A).

8 “(4) MAINTENANCE OR PERSONAL CARE SERV-
9 ICES.—The term ‘maintenance or personal care serv-
10 ices’ means any care the primary purpose of which
11 is to provide needed assistance with any of the ac-
12 tivities of daily living described in paragraph (2)(B).

13 “(5) LICENSED HEALTH CARE PRACTI-
14 TIONER.—The term ‘licensed health care practi-
15 tioner’ means any physician (as defined in section
16 1861(r) of the Social Security Act) and any reg-
17 istered professional nurse, licensed social worker, or
18 other individual who meets such requirements as
19 may be prescribed by the Secretary.

20 “(d) CONTINUATION COVERAGE EXCISE TAX NOT
21 TO APPLY.—This section shall not apply in determining
22 whether section 4980B (relating to failure to satisfy con-
23 tinuation coverage requirements of group health plans) ap-
24 plies.

1 “(e) INFLATION ADJUSTMENT OF \$200 BENEFIT
2 LIMIT.—

3 “(1) IN GENERAL.—In the case of a calendar
4 year after 1994, the \$200 amount contained in sub-
5 section (b)(1)(B) shall be increased for such cal-
6 endar year by the medical care cost adjustment for
7 such calendar year or 5 percent per year, whichever
8 is greater. If any increase determined under the pre-
9 ceding sentence is not a multiple of \$10, such in-
10 crease shall be rounded to the nearest multiple of
11 \$10.

12 “(2) MEDICAL CARE COST ADJUSTMENT.—For
13 purposes of paragraph (1), the medical care cost ad-
14 justment for any calendar year is the percentage (if
15 any) by which—

16 “(A) the medical care component of the
17 Consumer Price Index (as defined in section
18 1(f)(5)) for August of the preceding calendar
19 year, exceeds

20 “(B) such component for August of 1993.”

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for such subpart E is amended by inserting after the item
23 relating to section 818 the following new item:

“Sec. 818A. Treatment of long-term care insurance or plans.”

1 **SEC. 102. EXCLUSION FOR BENEFITS PROVIDED UNDER**
2 **LONG-TERM CARE INSURANCE; INCLUSION**
3 **OF EMPLOYER-PROVIDED COVERAGE.**

4 (a) IN GENERAL.—Subsection (a) of section 104 of
5 the Internal Revenue Code of 1986 (relating to compensa-
6 tion for injuries or sickness) is amended by striking “and”
7 at the end of paragraph (4), by striking the period at the
8 end of paragraph (5) and inserting “, and”, and by insert-
9 ing after paragraph (4) the following new paragraph:

10 “(6) benefits under a long-term care insurance
11 contract (as defined in section 818A(b)).”

12 (b) INCLUSION OF EMPLOYER-PROVIDED COV-
13 ERAGE.—Section 106 of such Code (relating to contribu-
14 tions by employer to accident and health plans) is amend-
15 ed by adding at the end thereof the following sentence:
16 “The preceding sentence shall not apply to any plan pro-
17 viding coverage for qualified long-term care services.”

18 **SEC. 103. CREDIT FOR QUALIFIED LONG-TERM CARE PRE-**
19 **MIUMS.**

20 (a) GENERAL RULE.—Subpart C of part IV of sub-
21 chapter A of chapter 1 of the Internal Revenue Code of
22 1986 (relating to refundable credits) is amended by redes-
23 ignating section 35 as section 36 and by inserting after
24 section 34 the following new section:

1 **“SEC. 35. LONG-TERM CARE INSURANCE CREDIT.**

2 “(a) GENERAL RULE.—In the case of an individual,
3 there shall be allowed as a credit against the tax imposed
4 by this subtitle for the taxable year an amount equal to
5 the applicable percentage of the eligible long-term care
6 premiums paid during such taxable year for such individ-
7 ual or the spouse of such individual.

8 “(b) APPLICABLE PERCENTAGE.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the term ‘applicable percentage’ means 31 per-
11 cent reduced (but not below zero) by 1 percentage
12 point for each \$1,000 (or fraction thereof) by which
13 the taxpayer’s adjusted gross income for the taxable
14 year exceeds the base amount.

15 “(2) BASE AMOUNT.—For purposes of para-
16 graph (1), the term ‘base amount’ means—

17 “(A) except as otherwise provided in this
18 paragraph, \$25,000,

19 “(B) \$40,000 in the case of joint return,
20 and

21 “(C) zero in the case of a taxpayer who—

22 “(i) is married at the close of the tax-
23 able year (within the meaning of section
24 7703) but does not file a joint return for
25 such taxable year, and

1 “(ii) does not live apart from his or
2 her spouse at all times during the taxable
3 year.

4 “(c) ELIGIBLE LONG-TERM CARE PREMIUMS.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the term ‘eligible long-term care premiums’
7 means the amount paid during a taxable year for
8 any long-term care insurance contract (as defined in
9 section 818A) covering an individual, to the extent
10 such amount does not exceed the limitation deter-
11 mined under the following table:

“In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	1,600
More than 70	2,000.

12 “(2) INDEXING.—

13 “(A) IN GENERAL.—In the case of any
14 taxable year beginning in a calendar year after
15 1993, each dollar amount contained in para-
16 graph (1) shall be increased by the medical care
17 cost adjustment of such amount for such cal-
18 endar year. If any increase determined under
19 the preceding sentence is not a multiple of \$10,
20 such increase shall be rounded to the nearest
21 multiple of \$10.

1 “(B) MEDICAL CARE COST ADJUST-
 2 MENT.—For purposes of subparagraph (A), the
 3 medical care cost adjustment for any calendar
 4 year is the percentage (if any) by which—

5 “(i) the medical care component of
 6 the Consumer Price Index (as defined in
 7 section 1(f)(5)) for August of the preced-
 8 ing calendar year, exceeds

9 “(ii) such component for August of
 10 1993.

11 “(d) COORDINATION WITH MEDICAL EXPENSE DE-
 12 DUCTION.—Any amount allowed as a credit under this
 13 section shall not be taken into account under section 213.”

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for subpart C of part IV of subchapter A of chapter 1
 16 of such Code is amended by striking the item relating to
 17 section 35 and inserting the following:

 “Sec. 35. Long-term care insurance credit.
 “Sec. 36. Overpayments of tax.”

18 **SEC. 104. QUALIFIED LONG-TERM SERVICES TREATED AS**
 19 **MEDICAL CARE.**

20 (a) GENERAL RULE.—Paragraph (1) of section
 21 213(d) of the Internal Revenue Code of 1986 (defining
 22 medical care) is amended by striking “or” at the end of
 23 subparagraph (B), by redesignating subparagraph (C) as

1 subparagraph (D), and by inserting after subparagraph
2 (B) the following new subparagraph:

3 “(C) for qualified long-term care services
4 (as defined in section 818A(c)), or”.

5 (b) DEDUCTION FOR LONG-TERM CARE EXPENSES
6 FOR PARENT OR GRANDPARENT.—Section 213 of such
7 Code (relating to deduction for medical expenses) is
8 amended by adding at the end the following new sub-
9 section:

10 “(g) SPECIAL RULE FOR CERTAIN LONG-TERM CARE
11 EXPENSES.—For purposes of subsection (a), the term ‘de-
12 pendent’ shall include any parent or grandparent of the
13 taxpayer for whom the taxpayer has expenses for long-
14 term care services described in section 818A(c), but only
15 to the extent of such expenses.”

16 (c) TECHNICAL AMENDMENTS.—

17 (1) Subparagraph (D) of section 213(d)(1) of
18 such Code (as redesignated by subsection (a)) is
19 amended by striking “subparagraphs (A) and (B)”
20 and inserting “subparagraphs (A), (B), and (C)”.

21 (2) Paragraph (1) of section 213(d) of such
22 Code is amended by adding at the end thereof the
23 following new flush sentence:

24 “‘In the case of a long-term care insurance contract
25 (as defined in section 818A), only eligible long-term

1 care premiums (as defined in section 35(c)) shall be
2 taken into account under subparagraph (D).”

3 (3) Paragraph (6) of section 213(d) of such
4 Code is amended—

5 (A) by striking “subparagraphs (A) and
6 (B)” and inserting “subparagraphs (A), (B),
7 and (C)”, and

8 (B) by striking “paragraph (1)(C)” in sub-
9 paragraph (A) and inserting “paragraph
10 (1)(D)”.

11 (4) Paragraph (7) of section 213(d) of such
12 Code is amended by striking “subparagraphs (A)
13 and (B)” and inserting “subparagraphs (A), (B),
14 and (C)”.

15 **SEC. 105. TAX RESERVE TREATMENT OF LONG-TERM CARE**
16 **INSURANCE CONTRACTS.**

17 (a) IN GENERAL.—Subparagraph (A) of section
18 807(d)(3) of the Internal Revenue Code of 1986 (relating
19 to tax reserve method) is amended—

20 (1) by redesignating clause (iv) as clause (v),

21 (2) by striking “or (iii)” each place it appears
22 in clause (v) (as so redesignated) and inserting
23 “(iii), or (iv), and

24 (3) by inserting after clause (iii) the following
25 new clause:

1 “(iv) LONG-TERM CARE INSURANCE
 2 CONTRACTS.—In the case of any long-term
 3 care insurance contract, a one-year full
 4 preliminary term method.”

5 (b) TECHNICAL AMENDMENT.—Clause (iii) of section
 6 807(d)(3)(A) of such Code is amended by inserting “other
 7 than a long-term care insurance contract,” after “con-
 8 tract,”.

9 **SEC. 106. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
 10 **WITHDRAWN FROM INDIVIDUAL RETIRE-**
 11 **MENT PLANS OR 401(k) PLANS FOR LONG-**
 12 **TERM CARE INSURANCE.**

13 (a) IN GENERAL.—Part III of subchapter B of chap-
 14 ter 1 of the Internal Revenue Code of 1986 (relating to
 15 items specifically excluded from gross income) is amended
 16 by redesignating section 137 as section 138 and by insert-
 17 ing after section 136 the following new section:

18 **“SEC. 137. DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT**
 19 **ACCOUNTS AND SECTION 401(k) PLANS FOR**
 20 **LONG-TERM CARE INSURANCE.**

21 “(a) GENERAL RULE.—The amount includible in the
 22 gross income of an individual for the taxable year by rea-
 23 son of qualified distributions during such taxable year
 24 shall not exceed the excess of—

1 “(1) the amount which would (but for this sec-
2 tion) be so includible by reason of such distributions,
3 over

4 “(2) the aggregate premiums paid by such indi-
5 vidual during such taxable year for any long-term
6 care insurance contract (as defined in section 818A)
7 for the benefit of such individual or the spouse of
8 such individual.

9 “(b) QUALIFIED DISTRIBUTION.—For purposes of
10 this section, the term ‘qualified distribution’ means any
11 distribution to an individual from an individual retirement
12 account or a section 401(k) plan if such individual has
13 attained age 59½ on or before the date of the distribution
14 (and, in the case of a distribution used to pay premiums
15 for the benefit of the spouse of such individual, such
16 spouse has attained age 59½ on or before the date of the
17 distribution).

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) INDIVIDUAL RETIREMENT ACCOUNT.—The
20 term ‘individual retirement account’ has the mean-
21 ing given such term by section 408(a).

22 “(2) SECTION 401(k) PLAN.—The term ‘section
23 401(k) plan’ means any employer plan which meets
24 the requirements of section 401(a) and which in-

1 includes a qualified cash or deferred arrangement (as
2 defined in section 401(k)).

3 “(d) SPECIAL RULES FOR SECTION 401(k) PLANS.—

4 “(1) WITHDRAWALS CANNOT EXCEED ELEC-
5 TIVE CONTRIBUTIONS UNDER QUALIFIED CASH OR
6 DEFERRED ARRANGEMENT.—This section shall not
7 apply to any distribution from a section 401(k) plan
8 to the extent the aggregate amount of such distribu-
9 tions for the use described in subsection (a) exceeds
10 the aggregate employer contributions made pursuant
11 to the employee’s election under section 401(k)(2).

12 “(2) WITHDRAWALS NOT TO CAUSE DISQUALI-
13 FICATION.—A plan shall not be treated as failing to
14 satisfy the requirements of section 401, and an ar-
15 rangement shall not be treated as failing to be a
16 qualified cash or deferred arrangement (as defined
17 in section 401(k)(2)), merely because under the plan
18 or arrangement distributions are permitted which
19 are excludable from gross income by reason of this
20 section.”

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 401(k) of such Code is amended by
23 adding at the end the following new paragraph:

1 “(11) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals for payment of long-term care premiums, see section 137.”

2 (2) Section 408(d) of such Code is amended by
3 adding at the end the following new paragraph:

4 “(8) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals from individual retirement accounts for payment of long-term care premiums, see section 137.”

5 (3) The table of sections for such part III is
6 amended by striking the last item and inserting the
7 following new items:

“Sec. 137. Distributions from individual retirement accounts and section 401(k) plans for long-term care insurance.

“Sec. 138. Cross references to other Acts.”

8 **SEC. 107. TAX TREATMENT OF ACCELERATED DEATH BENE-**
9 **FITS UNDER LIFE INSURANCE CONTRACTS.**

10 Section 101 of the Internal Revenue Code of 1986
11 (relating to certain death benefits) is amended by adding
12 at the end thereof the following new subsection:

13 “(g) TREATMENT OF CERTAIN ACCELERATED
14 DEATH BENEFITS.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, any amount paid or advanced to an individual
17 under a life insurance contract on the life of an in-
18 sured—

19 “(A) who is a terminally ill individual, or

1 “(B) who is a chronically ill individual (as
2 defined in section 818A(c)(2)) who is confined
3 to a qualified facility (as defined in section
4 818A(c)(3)(A)),
5 shall be treated as an amount paid by reason of the
6 death of such insured.

7 “(2) TERMINALLY ILL INDIVIDUAL.—For pur-
8 poses of this subsection, the term ‘terminally ill indi-
9 vidual’ means an individual who has been certified
10 by a physician as having an illness or physical condi-
11 tion which can reasonably be expected to result in
12 death in 12 months or fewer.

13 “(3) PHYSICIAN.—For purposes of this sub-
14 section, the term ‘physician’ has the meaning given
15 to such term by section 213(d)(4).”

16 **SEC. 108. TAX TREATMENT OF COMPANIES ISSUING QUALI-**
17 **FIED ACCELERATED DEATH BENEFIT RID-**
18 **ERS.**

19 (a) QUALIFIED ACCELERATED DEATH BENEFIT RID-
20 ERS TREATED AS LIFE INSURANCE.—Section 818 of the
21 Internal Revenue Code of 1986 (relating to other defini-
22 tions and special rules) is amended by adding at the end
23 thereof the following new subsection:

1 “(g) QUALIFIED ACCELERATED DEATH BENEFIT
2 RIDERS TREATED AS LIFE INSURANCE.—For purposes of
3 this part—

4 “(1) IN GENERAL.—Any reference to a life in-
5 surance contract shall be treated as including a ref-
6 erence to a qualified accelerated death benefit rider
7 on such contract.

8 “(2) QUALIFIED ACCELERATED DEATH BENE-
9 FIT RIDERS.—For purposes of this subsection, the
10 term ‘qualified accelerated death benefit rider’
11 means any rider or addendum on, or other provision
12 of a life insurance contract which provides for pay-
13 ments to an individual on the life of an insured upon
14 such insured—

15 “(A) becoming a terminally ill individual
16 (as defined in section 101(g)(2)), or

17 “(B) becoming a chronically ill individual
18 (as defined in section 818A(c)(2)) who is con-
19 fined to a qualified facility (as defined in sec-
20 tion 818A(c)(3)(A)).”

21 (b) DEFINITIONS OF LIFE INSURANCE AND MODI-
22 FIED ENDOWMENT CONTRACTS.—

23 (1) RIDER TREATED AS QUALIFIED ADDI-
24 TIONAL BENEFIT.—Paragraph (5)(A) of section
25 7702(f) of such Code is amended by striking “or”

1 at the end of clause (iv), by redesignating clause (v)
2 as clause (vi), and by inserting after clause (iv) the
3 following new clause:

4 “(v) any qualified accelerated death
5 benefit rider (as defined in section
6 818(g)(2)) or any long-term care insurance
7 contract rider which reduces the death
8 benefit, or”.

9 (2) TRANSITIONAL RULE.—For purposes of ap-
10 plying section 7702 or 7702A of the Internal Reve-
11 nue Code of 1986 to any contract (or determining
12 whether either such section applies to such con-
13 tract), the issuance of a rider or addendum on, or
14 other provision of, a life insurance contract permit-
15 ting the acceleration of death benefits (as described
16 in section 101(g) of such Code) or payments for
17 qualified long-term care services (as defined in sec-
18 tion 818A of such Code) shall not be treated as a
19 modification or material change of such contract.

20 **SEC. 109. QUALIFIED LONG-TERM CARE INSURANCE CON-**
21 **TRACTS PERMITTED TO BE OFFERED IN CAF-**
22 **ETERIA PLANS.**

23 (a) IN GENERAL.—Paragraph (2) of section 125(d)
24 of the Internal Revenue Code of 1986 (relating to exclu-

1 sion of deferred compensation) is amended by adding at
2 the end thereof the following new subparagraph:

3 “(D) EXCEPTION FOR LONG-TERM CARE
4 INSURANCE CONTRACTS.—For purposes of sub-
5 paragraph (A), a plan shall not be treated as
6 providing deferred compensation by reason of
7 providing any long-term care insurance contract
8 (as defined in section 818A(b)) if—

9 “(i) the employee may elect to con-
10 tinue the insurance upon cessation of par-
11 ticipation in the plan, and

12 “(ii) the amount paid or incurred dur-
13 ing any taxable year for such insurance
14 does not exceed the premium which would
15 have been payable for such year under a
16 level premium structure.”

17 **SEC. 110. EFFECTIVE DATE.**

18 The amendments made by this title shall apply to tax-
19 able years beginning after December 31, 1993.

1 **TITLE II—ESTABLISHMENT OF**
 2 **FEDERAL STANDARDS FOR**
 3 **LONG-TERM CARE INSUR-**
 4 **ANCE**

5 **SEC. 201. ESTABLISHMENT OF FEDERAL STANDARDS FOR**
 6 **LONG-TERM CARE INSURANCE.**

7 (a) IN GENERAL.—The Public Health Service Act is
 8 amended—

9 (1) by redesignating title XXVII (42 U.S.C.
 10 300cc et seq.) as title XXVIII; and

11 (2) by inserting after title XXVI the following
 12 new title:

13 **“TITLE XXVII—LONG-TERM CARE**
 14 **INSURANCE STANDARDS**

15 **“PART A—PROMULGATION OF STANDARDS AND MODEL**
 16 **BENEFITS**

17 **“SEC. 2701. STANDARDS.**

18 **“(a) APPLICATION OF STANDARDS.—**

19 **“(1) NAIC.—**The Secretary shall request that
 20 the National Association of Insurance Commis-
 21 sioners (hereinafter in this title referred to as the
 22 ‘NAIC’)—

23 **“(A) develop specific standards that incor-**
 24 **porate the requirements of this title; and**

1 “(B) report to the Secretary on such
2 standards,
3 by not later than 12 months after enactment of this
4 title. If the NAIC develops such model standards
5 that incorporate the requirements of this title within
6 such period and the Secretary finds that such stand-
7 ards implement the requirements of this title, such
8 standards shall be the standards applied under this
9 title.

10 “(2) DEFAULT.—If the NAIC does not promul-
11 gate the model standards under paragraph (1) by
12 the deadline established in that paragraph, the Sec-
13 retary shall promulgate, within 12 months after such
14 deadline, a regulation that provides standards that
15 incorporate the requirements of this title and such
16 standards shall apply as provided for in this title.

17 “(3) RELATION TO STATE LAW.—Nothing in
18 this title shall be construed as preventing a State
19 from applying standards that provide greater protec-
20 tion to policyholders of long-term care insurance
21 policies than the standards promulgated under this
22 title, except that such State standards may not be
23 inconsistent or in conflict with any of the require-
24 ments of this title.

1 “(b) DEADLINE FOR APPLICATION OF STAND-
2 ARDS.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 the date specified in this subsection for a State is—

5 “(A) the date the State adopts the stand-
6 ards established under subsection (a)(1); or

7 “(B) the date that is 1 year after the first
8 day of the first regular legislative session that
9 begins after the date such standards are first
10 established under subsection (a)(2);

11 whichever is earlier.

12 “(2) STATE REQUIRING LEGISLATION.—In the
13 case of a State which the Secretary identifies, in
14 consultation with the NAIC, as—

15 “(A) requiring State legislation (other than
16 legislation appropriating funds) in order for the
17 standards established under subsection (a) to be
18 applied; but

19 “(B) having a legislature which is not
20 scheduled to meet within 1 year following the
21 beginning of the next regular legislative session
22 in which such legislation may be considered;

23 the date specified in this subsection is the first day
24 of the first calendar quarter beginning after the
25 close of the first legislative session of the State legis-

1 lature that begins on or after January 1, 1994. For
2 purposes of the previous sentence, in the case of a
3 State that has a 2-year legislative session, each year
4 of such session shall be deemed to be a separate reg-
5 ular session of the State legislature.

6 “(c) ITEMS INCLUDED IN STANDARDS.—The stand-
7 ards promulgated under subsection (a) shall include—

8 “(1) minimum Federal standards for long-term
9 care insurance consistent with the provisions of this
10 title;

11 “(2) standards for the enhanced protection of
12 consumers with long-term care insurance;

13 “(3) procedures for the modification of the
14 standards established under paragraph (1) in a
15 manner consistent with future laws to expand exist-
16 ing Federal or State long-term care benefits or es-
17 tablish a comprehensive Federal or State long-term
18 care benefit program; and

19 “(4) other activities determined appropriate by
20 Congress.

21 “(d) CONSULTATION.—In establishing standards and
22 models of benefits under this section, the Secretary shall
23 provide for and consult with an advisory committee to be
24 chosen by the Secretary, and composed of—

1 “(1) three individuals who are representatives
2 of carriers;

3 “(2) three individuals who are representatives
4 of consumer groups;

5 “(3) three representatives who are representa-
6 tives of providers of long-term care services;

7 “(4) three other individuals who are not rep-
8 resentatives of carriers or of providers of long-term
9 care services and who have expertise in the delivery
10 and financing of such services; and

11 “(5) the Secretary of Veterans Affairs.

12 “(e) DUTIES.—The advisory committee established
13 under subsection (d) shall—

14 “(1) recommend the appropriate inflationary
15 index to be used with respect to the inflation protec-
16 tion benefit portion of the standards;

17 “(2) recommend the uniform needs assessment
18 mechanism to be used in determining the eligibility
19 of individuals for benefits under a policy;

20 “(3) recommend appropriate standards for ben-
21 efits under section 2715(c); and

22 “(4) perform such other activities as deter-
23 mined appropriate by the Secretary.

24 “(f) ADMINISTRATIVE PROVISIONS.—The following
25 provisions of section 1886(e)(6) of the Social Security Act

1 shall apply to the advisory committee chosen under sub-
2 section (d) in the same manner as such provisions apply
3 under such section:

4 “(1) Subparagraph (C) (relating to staffing and
5 administration).

6 “(2) Subparagraph (D) (relating to compensa-
7 tion of members).

8 “(3) Subparagraph (F) (relating to access to
9 information).

10 “(4) Subparagraph (G) (relating to use of
11 funds).

12 “(5) Subparagraph (H) (relating to periodic
13 GAO audits).

14 “(6) Subparagraph (J) (relating to requests for
15 appropriations).

16 “PART B—ESTABLISHMENT AND IMPLEMENTATION OF
17 LONG-TERM CARE INSURANCE POLICY STANDARDS

18 “**SEC. 2711. IMPLEMENTATION OF POLICY STANDARDS.**

19 “(a) IN GENERAL.—

20 “(1) REGULATORY PROGRAM.—No long-term
21 care policy (as defined in section (2721)) may be is-
22 sued, sold, or offered for sale as a long-term care in-
23 surance policy in a State on or after the date speci-
24 fied in section 2701(b) unless—

1 “(A) the Secretary determines that the
2 State has established a regulatory program
3 that—

4 “(i) provides for the application and
5 enforcement of the standards established
6 under section 2701(a); and

7 “(ii) complies with the requirements
8 of subsection (b);
9 by the date specified in section 2701(b), and
10 the policy has been approved by the State com-
11 missioner or superintendent of insurance under
12 such program; or

13 “(B) if the State has not established such
14 a program, or if the State’s regulatory program
15 has been decertified, the policy has been cer-
16 tified by the Secretary (in accordance with such
17 procedures as the Secretary may establish) as
18 meeting the standards established under section
19 2701(a) by the date specified in section
20 2701(b).

21 For purposes of this subsection, the advertising or
22 soliciting with respect to a policy, directly or indi-
23 rectly, shall be deemed the offering for sale of the
24 policy.

1 “(2) REVIEW OF STATE REGULATORY PRO-
2 GRAMS.—The Secretary periodically shall review reg-
3 ulatory programs described in paragraph (1)(A) to
4 determine if they continue to provide for the applica-
5 tion and enforcement of the standards and proce-
6 dures established under section 2701(a) and (b). If
7 the Secretary determines that a State regulatory
8 program no longer meets such standards and re-
9 quirements, before making a final determination, the
10 Secretary shall provide the State an opportunity to
11 adopt such a plan of correction as would permit the
12 program to continue to meet such standards and re-
13 quirements. If the Secretary makes a final deter-
14 mination that the State regulatory program, after
15 such an opportunity, fails to meet such standards
16 and requirements, the Secretary shall assume re-
17 sponsibility under paragraph (1)(B) with respect to
18 certifying policies in the State and shall exercise full
19 authority under section 2701 for carriers, agents, or
20 associations or its subsidiary in the State plans in
21 the State.

22 “(b) ADDITIONAL REQUIREMENTS FOR APPROVAL
23 OF STATE REGULATORY PROGRAMS.—For purposes of
24 subsection (a)(1)(A)(ii), the requirements of this sub-
25 section for a State regulatory program are as follows:

1 “(1) ENFORCEMENT.—The enforcement under
2 the program—

3 “(A) shall be designed in a manner so as
4 to secure compliance with the standards within
5 30 days after the date of a finding of non-
6 compliance with such standards; and

7 “(B) shall provide for notice in the annual
8 report required under paragraph (5) to the Sec-
9 retary of cases where such compliance is not se-
10 cured within such 30-day period.

11 “(2) PROCESS.—The enforcement process
12 under each State regulatory program shall provide
13 for—

14 “(A) procedures for individuals and enti-
15 ties to file written, signed complaints respecting
16 alleged violations of the standards;

17 “(B) responding on a timely basis to such
18 complaints;

19 “(C) the investigation of—

20 “(i) those complaints which have a
21 reasonable probability of validity, and

22 “(ii) such other alleged violations of
23 the standards as the program finds appro-
24 priate; and

1 “(D) the imposition of appropriate sanc-
2 tions (which include, in appropriate cases, the
3 imposition of a civil money penalty as provided
4 for in section 2718) in the case of a carrier,
5 agent, or association or its subsidiary deter-
6 mined to have violated the standards.

7 “(3) CONSUMER ACCESS TO COMPLIANCE IN-
8 FORMATION.—

9 “(A) IN GENERAL.—A State regulatory
10 program must provide for consumer access to
11 complaints filed with the State commissioner or
12 superintendent of insurance with respect to
13 long-term care insurance policies.

14 “(B) CONFIDENTIALITY.—The access pro-
15 vided under subparagraph (A) shall be limited
16 to the extent required to protect the confiden-
17 tiality of the identity of individual policyholders.

18 “(4) PROCESS FOR APPROVAL OF PREMIUMS.—

19 “(A) IN GENERAL.—Each State regulatory
20 program shall—

21 “(i) provide for a process for approv-
22 ing or disapproving proposed premium in-
23 creases or decreases with respect to long-
24 term care insurance policies; and

1 “(ii) establish a policy for receipt and
2 consideration of public comments before
3 approving such a premium increase or de-
4 crease.

5 “(B) CONDITIONS FOR APPROVAL.—No
6 premium increase shall be approved (or deemed
7 approved) under subparagraph (A) unless the
8 proposed increase is accompanied by an actuar-
9 ial memorandum which—

10 “(i) includes a description of the as-
11 sumptions that justify the increase;

12 “(ii) contains such information as
13 may be required under the Standards; and

14 “(iii) is made available to the public.

15 “(C) APPLICATION.—Except as provided in
16 subparagraph (D), this paragraph shall not
17 apply to a group long-term care insurance pol-
18 icy issued to a group described in section
19 4(E)(1) of the NAIC Long Term Care Insur-
20 ance Model Act (effective January 1991), ex-
21 cept that such group policy shall, pursuant to
22 guidelines developed by the NAIC, provide no-
23 tice to policyholders and certificate holders of
24 any premium change under such group policy.

1 “(D) EXCEPTION.—Subparagraph (C)
2 shall not apply to—

3 “(i) group conversion policies;

4 “(ii) the group continuation feature of
5 a group policy if the insurer separately
6 rates employee and continuation coverages;
7 and

8 “(iii) group policies where the func-
9 tion of the employer is limited solely to col-
10 lecting premiums (through payroll deduc-
11 tions or dues checkoff) and remitting them
12 to the insurer.

13 “(E) CONSTRUCTION.—Nothing in this
14 paragraph shall be construed as preventing the
15 NAIC from promulgating standards, or a State
16 from enacting and enforcing laws, with respect
17 to premium rates or loss ratios for all, including
18 group, long-term care insurance policies.

19 “(5) ANNUAL REPORTS.—Each State regu-
20 latory program shall provide for annual reports to be
21 submitted to the Secretary on the implementation
22 and enforcement of the standards in the State, in-
23 cluding information concerning violations in excess
24 of 30 days.

1 “(6) ACCESS TO OTHER INFORMATION.—The
2 State regulatory program must provide for consumer
3 access to actuarial memoranda provided under para-
4 graph (4).

5 “(7) DEFAULT.—In the case of a State without
6 a regulatory program approved under subsection (a),
7 the Secretary shall provide for the enforcement ac-
8 tivities described in subsection (c).

9 “(c) SECRETARIAL ENFORCEMENT AUTHORITY.—

10 “(1) IN GENERAL.—The Secretary shall exer-
11 cise authority under this section in the case of a
12 State that does not have a regulatory program ap-
13 proved under this section.

14 “(2) COMPLAINTS AND INVESTIGATIONS.—The
15 Secretary shall establish procedures—

16 “(A) for individuals and entities to file
17 written, signed complaints respecting alleged
18 violations of the requirements of this title;

19 “(B) for responding on a timely basis to
20 such complaints; and

21 “(C) for the investigation of—

22 “(i) those complaints that have a rea-
23 sonable probability of validity; and

1 “(ii) such other alleged violations of
2 the requirements of this title as the Sec-
3 retary determines to be appropriate.

4 In conducting investigations under this subsection,
5 agents of the Secretary shall have reasonable access
6 necessary to enable such agents to examine evidence
7 of any carrier, agent, or association or its subsidiary
8 being investigated.

9 “(3) HEARINGS.—

10 “(A) IN GENERAL.—Prior to imposing an
11 order described in paragraph (4) against a car-
12 rier, agent, or association or its subsidiary
13 under this section for a violation of the require-
14 ments of this title, the Secretary shall provide
15 the carrier, agent, association or subsidiary
16 with notice and, upon request made within a
17 reasonable time (of not less than 30 days, as
18 established by the Secretary by regulation) of
19 the date of the notice, a hearing respecting the
20 violation.

21 “(B) CONDUCT OF HEARING.—Any hear-
22 ing requested under subparagraph (A) shall be
23 conducted before an administrative law judge.
24 If no hearing is so requested, the Secretary’s

1 imposition of the order shall constitute a final
2 and unappealable order.

3 “(C) AUTHORITY IN HEARINGS.—In con-
4 ducting hearings under this paragraph—

5 “(i) agents of the Secretary and ad-
6 ministrative law judges shall have reason-
7 able access necessary to enable such agents
8 and judges to examine evidence of any car-
9 rier, agent, or association or its subsidiary
10 being investigated; and

11 “(ii) administrative law judges, may,
12 if necessary, compel by subpoena the at-
13 tendance of witnesses and the production
14 of evidence at any designated place or
15 hearing.

16 In case of contumacy or refusal to obey a sub-
17 poena lawfully issued under this subparagraph
18 and upon application of the Secretary, an ap-
19 propriate district court of the United States
20 may issue an order requiring compliance with
21 such subpoena and any failure to obey such
22 order may be punished by such court as a con-
23 tempt thereof.

24 “(D) ISSUANCE OF ORDERS.—If an admin-
25 istrative law judge determines in a hearing

1 under this paragraph, upon the preponderance
2 of the evidence received, that a carrier, agent,
3 or association or its subsidiary named in the
4 complaint has violated the requirements of this
5 title, the administrative law judge shall state
6 the findings of fact and issue and cause to be
7 served on such carrier, agent, association, or
8 subsidiary an order described in paragraph (4).

9 “(4) CEASE AND DESIST ORDER WITH CIVIL
10 MONEY PENALTY.—

11 “(A) IN GENERAL.—Subject to the provi-
12 sions of subparagraphs (B) through (F), an
13 order under this paragraph—

14 “(i) shall require the agent, associa-
15 tion or its subsidiary, or a carrier—

16 “(I) to cease and desist from
17 such violations; and

18 “(II) to pay a civil penalty in an
19 amount not to exceed \$15,000 in the
20 case of each agent, and not to exceed
21 \$25,000 for each association or its
22 subsidiary or a carrier for each such
23 violation; and

24 “(ii) may require the agent, associa-
25 tion or its subsidiary, or a carrier to take

1 such other remedial action as is appro-
2 priate.

3 “(B) CORRECTIONS WITHIN 30 DAYS.—No
4 order shall be imposed under this paragraph by
5 reason of any violation if the carrier, agent, or
6 association or its subsidiary establishes to the
7 satisfaction of the Secretary that—

8 “(i) such violation was due to reason-
9 able cause and was not intentional and was
10 not due to willful neglect; and

11 “(ii) such violation is corrected within
12 the 30-day period beginning on the earliest
13 date the carrier, agent, association, or sub-
14 sidiary knew, or exercising reasonable dili-
15 gence could have known, that such a viola-
16 tion was occurring.

17 “(C) WAIVER BY SECRETARY.—In the case
18 of a violation under this title that is due to rea-
19 sonable cause and not to willful neglect, the
20 Secretary may waive part or all of the civil
21 money penalty imposed under subparagraph
22 (A)(i)(II) to the extent that payment of such
23 penalty would be grossly excessive relative to
24 the violation involved and to the need for deter-
25 rence of violations.

1 “(D) ADMINISTRATIVE APPELLATE RE-
2 VIEW.—The decision and order of an adminis-
3 trative law judge under this paragraph shall be-
4 come the final agency decision and order of the
5 Secretary unless, within 30 days, the Secretary
6 modifies or vacates the decision and order, in
7 which case the decision and order of the Sec-
8 retary shall become a final order under this
9 paragraph.

10 “(E) JUDICIAL REVIEW.—A carrier, agent,
11 or association or its subsidiary or any other in-
12 dividual adversely affected by a final order is-
13 sued under this paragraph may, within 45 days
14 after the date the final order is issued, file a pe-
15 tition in the Court of Appeals for the appro-
16 priate circuit for review of the order.

17 “(F) ENFORCEMENT OF ORDERS.—If a
18 carrier, agent, or association or its subsidiary
19 fails to comply with a final order issued under
20 this paragraph against the carrier, agent, asso-
21 ciation or subsidiary after opportunity for judi-
22 cial review under subparagraph (E), the Sec-
23 retary shall file a suit to seek compliance with
24 the order in any appropriate district court of
25 the United States. In any such suit, the validity

1 and appropriateness of the final order shall not
2 be subject to review.

3 “(d) DEMONSTRATION GRANT PROGRAM.—

4 “(1) IN GENERAL.—The Secretary may award
5 grants to States for the establishment of demonstra-
6 tion programs to improve the enforcement within
7 such States of long-term care insurance standards
8 applicable under this title.

9 “(2) APPLICATION.—To be eligible to receive a
10 grant under paragraph (1), a State shall prepare
11 and submit to the Secretary an application at such
12 time, in such manner, and containing such informa-
13 tion as the Secretary may require, including a de-
14 scription of the program for which the State intends
15 to use the amounts provided under the grant.

16 “(3) MINIMUM AMOUNT OF GRANTS.—The
17 amount of a grant awarded under this subsection
18 shall not be less than \$100,000.

19 “(4) EVALUATION.—A State that receives a
20 grant under this subsection shall comply with such
21 evaluation procedures as the Secretary shall by regu-
22 lation establish. The Secretary shall utilize such
23 evaluations to conduct an overall evaluation of the
24 results of the demonstration programs established
25 under this section.

1 “(5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to carry out
3 this subsection, \$5,000,000 for each of the fiscal
4 years 1993 through 1997.

5 **“SEC. 2712. REGULATION OF SALES PRACTICES.**

6 “(a) DUTY OF GOOD FAITH AND FAIR DEALING.—

7 “(1) IN GENERAL.—Each agent (as defined in
8 section 2733) or association that is selling or offer-
9 ing for sale a long-term care insurance policy has
10 the duty of good faith and fair dealing to the pur-
11 chaser or potential purchaser of such a policy.

12 “(2) PROHIBITED PRACTICES.—An agent or as-
13 sociation is considered to have violated paragraph
14 (1) if the agent or association engages in any of the
15 following practices:

16 “(A) TWISTING.—

17 “(i) IN GENERAL.—Knowingly making
18 any misleading representation (including
19 the inaccurate completion of medical his-
20 tories) or incomplete or fraudulent com-
21 parison of any long-term care insurance
22 policy or insurers for the purpose of induc-
23 ing, or tending to induce, any person to re-
24 tain or effect a change with respect to a
25 long-term care insurance policy.

1 “(ii) POLICY REPLACEMENT FORM.—

2 With respect to any person who elects to
3 replace or effect a change in a long-term
4 care insurance policy, the individual that is
5 selling such policy shall ensure that such
6 person completes a policy replacement
7 form developed by the NAIC. A copy of
8 such form shall be provided to such person
9 and additional copies shall be delivered by
10 the selling individual to the old policy is-
11 suer and the new issuer and kept on file
12 for inspection by the State regulatory
13 agency.

14 “(B) HIGH PRESSURE TACTICS.—Employ-
15 ing any method of marketing having the effect
16 of, or intending to, induce the purchase of long-
17 term care insurance policy through force, fright,
18 threat or undue pressure, whether explicit or
19 implicit.

20 “(C) COLD LEAD ADVERTISING.—Making
21 use directly or indirectly of any method of mar-
22 keting which fails to disclose in a conspicuous
23 manner that a purpose of the method of mar-
24 keting is solicitation of insurance and that con-

1 tact will be made by an insurance agent or in-
2 surance company.

3 “(D) OTHERS.—Engaging in such other
4 practices determined inappropriate under guide-
5 lines issued by the NAIC.

6 “(b) FINANCIAL STANDARDS.—The NAIC shall de-
7 velop recommended financial minimum standards (includ-
8 ing both income and asset criteria) for the purpose of ad-
9 vising individuals considering the purchase of a long-term
10 care insurance policy.

11 “(c) PROHIBITION OF SALE OR ISSUANCE TO MEDIC-
12 AID BENEFICIARIES.—An agent, an association, or a car-
13 rier may not knowingly sell or issue a long-term care in-
14 surance policy to an individual who is eligible for medical
15 assistance under title XIX of the Social Security Act.

16 “(d) PROHIBITION OF SALE OR ISSUANCE OF DUPLI-
17 CATE SERVICE BENEFIT POLICIES.—An agent, associa-
18 tion or its subsidiary, or a carrier may not sell or issue
19 a service-benefit long-term care insurance policy to an in-
20 dividual—

21 “(1) knowing that the policy provides for cov-
22 erage that duplicates coverage already provided in
23 another service-benefit long-term care insurance pol-
24 icy held by such individual (unless the policy is in-
25 tended to replace such other policy); or

1 “(2) for the benefit of an individual unless the
2 individual (or a representative of the individual) pro-
3 vides a written statement to the effect that the cov-
4 erage—

5 “(A) does not duplicate other coverage in
6 effect under a service-benefit long-term care in-
7 surance policy; or

8 “(B) will replace another service-benefit
9 long-term care insurance policy.

10 In this subsection, the term ‘service-benefit long-term care
11 insurance policy’ means a long-term care insurance policy
12 which provides for benefits based on the type and amount
13 of services furnished.

14 “(e) PROHIBITION BASED ON ELIGIBILITY FOR
15 OTHER BENEFITS.—A carrier may not sell or issue a
16 long-term care insurance policy that reduces, limits or co-
17 ordinates the benefits provided under the policy on the
18 basis that the policyholder has or is eligible for other long-
19 term care insurance coverage or benefits.

20 “(f) PROVISION OF OUTLINE OF COVERAGE.—No
21 agent, association or its subsidiary, or carrier may sell or
22 offer for a sale a long-term care insurance policy (or for
23 a certificate under a group long-term care insurance pol-
24 icy) without providing to the purchaser or potential pur-
25 chaser (or representative) an outline of coverage that com-

1 plies with the standards established under section
2 2701(a).

3 “(g) PENALTIES.—Any agent who sells, offers for
4 sale, or issues a long-term care insurance policy in viola-
5 tion of this section may be imprisoned not more than 5
6 years, or fined in accordance with title 18, United States
7 Code, and, in addition, is subject to a civil money penalty
8 of not to exceed \$15,000 for each such violation. Any asso-
9 ciation or its subsidiary or carrier that sells, offers for
10 sale, or issues a long-term care insurance policy in viola-
11 tion of this section may be fined in accordance with title
12 18, United States Code, and in addition, is subject to a
13 civil money penalty of not to exceed \$25,000 for each vio-
14 lation.

15 “(h) AGENT TRAINING AND CERTIFICATION RE-
16 QUIREMENTS.—The NAIC, shall establish requirements
17 for long-term care insurance agent training and certifi-
18 cation that—

19 “(1) specify requirements for training insurance
20 agents who desire to sell or offer for sale long-term
21 care insurance policies; and

22 “(2) specify procedures for certifying agents
23 who have completed such training and who are as
24 qualified to sell or offer for sale long-term care in-
25 surance policies.

1 **“SEC. 2713. ADDITIONAL RESPONSIBILITIES FOR CAR-**
2 **RIERS.**

3 “(a) REFUND OF PREMIUMS.—If an application for
4 a long-term care insurance policy (or for a certificate
5 under a group long-term care insurance policy) is denied
6 or an applicant returns a policy or certificate within 30
7 days of the date of its issuance pursuant to subsection
8 2717, the carrier shall refund directly to the applicant,
9 or in the case of an employer to whomever remits the pre-
10 mium, and not by delivery by the agent, not later than
11 30 days after the date of the denial or return, any pre-
12 miums paid with respect to such a policy (or certificate).

13 “(b) MAILING OF POLICY.—If an application for a
14 long-term care insurance policy (or for a certificate under
15 a group long-term care insurance policy) is approved, the
16 carrier shall provide the applicant, or in the case of a
17 group plan the employer, the policy (or certificate) of in-
18 surance not later than 30 days after the date of the ap-
19 proval.

20 “(c) INFORMATION ON DENIALS OF CLAIMS.—If a
21 claim under a long-term care insurance policy is denied,
22 the carrier shall, within 30 days of the date of a written
23 request by the policyholder or certificate holder (or rep-
24 resentative)—

25 “(1) provide a written explanation of the rea-
26 sons for the denial; and

1 “(2) make available all medical and patient
2 records directly relating to such denial.

3 Except as provided in subsection (e) of section 2715, no
4 claim under such a policy may be denied on the basis of
5 a failure to disclose a condition at the time of issuance
6 of the policy if the application for the policy failed to re-
7 quest information respecting the condition.

8 “(d) REPORTING OF INFORMATION.—A carrier that
9 issues one or more long-term care insurance policies shall
10 periodically (not less often than annually) report, in a
11 form and in a manner determined by the NAIC, to the
12 Commissioner, superintendent or director of insurance of
13 each State in which the policy is delivered, and shall make
14 available to the Secretary, upon request, information in
15 a form and manner determined by the NAIC concerning—

16 “(1) the long-term care insurance policies of the
17 carrier that are in force;

18 “(2) the most recent premiums for such policies
19 and the premiums imposed for such policies since
20 their initial issuance;

21 “(3) the lapse rate, replacement rate, and re-
22 scission rates by policy;

23 “(4) the names of that 10 percent of its agents
24 that—

1 “(A) have the greatest lapse and replace-
2 ment rate; and

3 “(B) have produced at least \$50,000 of
4 long-term care insurance sales in the previous
5 year; and

6 “(5) the claims denied (expressed as a number
7 and as a percentage of claims submitted) by policy.
8 Information required under this subsection shall be re-
9 ported in a format specified in the standards established
10 under section 2701(a). For purposes of paragraph (3),
11 there shall be included (but reported separately) data con-
12 cerning lapses due to the death of the policyholder. For
13 purposes of paragraph (4), there shall not be included as
14 a claim any claim that is denied solely because of the fail-
15 ure to meet a deductible, waiting period, or exclusionary
16 period.

17 “(e) STANDARDS ON COMPENSATION FOR SALE OF
18 POLICIES.—

19 “(1) IN GENERAL.—A carrier that issues one or
20 more long-term care insurance policies may provide
21 a commission or other compensation to an agent or
22 other representative for the sale of such a policy only
23 if the first year commission or other first year com-
24 pensation to be paid does not exceed 200 percent of
25 the commission or other compensation paid for sell-

1 ing or servicing the policy in the second year, or if
2 the first year commission or other compensation to
3 be paid does not exceed 50 percent of the premium
4 paid on the first year policy, until the NAIC promul-
5 gates mandatory standards concerning compensation
6 for the sale of such policies.

7 “(2) SUBSEQUENT YEARS.—The commission or
8 other compensation provided for the sale of long-
9 term care insurance policies in years subsequent to
10 the first year of the policy shall be the same as that
11 provided in the second subsequent year and shall be
12 provided for no fewer than 5 subsequent years.

13 “(3) LIMITATION.—No carrier shall provide
14 compensation to its agents for the sale of a long-
15 term care insurance policy and no agent shall receive
16 compensation greater than the renewal compensation
17 payable by the replacing carrier on renewal policies
18 if an existing policy is replaced.

19 “(4) COMPENSATION DEFINED.—As used in
20 this subsection, the term ‘compensation’ includes pe-
21 cuniary or nonpecuniary remuneration of any kind
22 relating to the sale or renewal of the policy, includ-
23 ing but not limited to deferred compensation, bo-
24 nuses, gifts, prizes, awards, and finders fees.

1 **“SEC. 2714. RENEWABILITY STANDARDS FOR ISSUANCE,**
2 **AND BASIS FOR CANCELLATION OF POLICIES.**

3 “(a) IN GENERAL.—No long-term care insurance pol-
4 icy may be canceled or nonrenewed for any reason other
5 than nonpayment of premium, material misrepresentation
6 or fraud.

7 “(b) CONTINUATION AND CONVERSION RIGHTS FOR
8 GROUP POLICIES.—

9 “(1) IN GENERAL.—Each group long-term care
10 insurance policy shall provide covered individuals
11 with a basis for continuation or conversion in ac-
12 cordance with this subsection.

13 “(2) BASIS FOR CONTINUATION.—For purposes
14 of paragraph (1), a policy provides a basis for con-
15 tinuation of coverage if the policy maintains cov-
16 erage under the existing group policy when such cov-
17 erage would otherwise terminate and which is sub-
18 ject only to the continued timely payment of pre-
19 mium when due. A group policy which restricts pro-
20 vision of benefits and services to or contains incen-
21 tives to use certain providers or facility, may provide
22 continuation benefits which are substantially equiva-
23 lent to the benefits of the existing group policy.

24 “(3) BASIS FOR CONVERSION.—For purposes of
25 paragraph (1), a policy provides a basis for conver-

1 sion of coverage if the policy entitles each individ-
2 ual—

3 “(A) whose coverage under the group pol-
4 icy would otherwise be terminated for any rea-
5 son; and

6 “(B) who has been continuously insured
7 under the policy (or group policy which was re-
8 placed) for at least 6 months before the date of
9 the termination;

10 to issuance of a policy providing benefits identical to,
11 substantially equivalent to, or in excess of, those of
12 the policy being terminated, without evidence of in-
13 surability.

14 “(4) TREATMENT OF SUBSTANTIAL EQUIVA-
15 LENCE.—In determining under this subsection
16 whether benefits are substantially equivalent, consid-
17 eration should be given to the difference between
18 managed care and non-managed care plans.

19 “(5) GROUP REPLACEMENT OF POLICIES.—If a
20 group long-term care insurance policy is replaced by
21 another long-term care insurance policy purchased
22 by the same policyholder, the succeeding issuer shall
23 offer coverage to all persons covered under the old
24 group policy on its date of termination. Coverage
25 under the new group policy shall not result in any

1 exclusion for preexisting conditions that would have
2 been covered under the group policy being replaced.

3 “(c) STANDARDS FOR ISSUANCE.—

4 “(1) IN GENERAL.—

5 “(A) GUARANTEE.—An agent, association
6 or carrier that sells or issues long-term care in-
7 surance policies shall guarantee that such poli-
8 cies shall be sold or issued to an individual, or
9 eligible individual in the case of a group plan,
10 if such individual meets the minimum medical
11 underwriting requirements of such policy.

12 “(B) PREMIUM FOR CONVERTED POL-
13 ICY.—If a group policy from which conversion
14 is made is a replacement for a previous group
15 policy, the premium for the converted policy
16 shall be calculated on the basis of the insured’s
17 age at the inception of coverage under the
18 group policy from which conversion is made.
19 Where the group policy from which conversion
20 is made replaced previous group coverage, the
21 premium for the converted policy shall be cal-
22 culated on the basis of the insured’s age at in-
23 ception of coverage under the group policy re-
24 placed.

1 “(2) UPGRADE FOR CURRENT POLICIES.—The
2 NAIC shall establish standards, including those pro-
3 viding guidance on medical underwriting and age
4 rating, with respect to the access of individuals to
5 policies offering upgraded benefits.

6 “(d) EFFECT OF INCAPACITATION.—

7 “(1) IN GENERAL.—

8 “(A) PROHIBITION.—Except as provided
9 in paragraph (2), a long-term care insurance
10 policy in effect as of the effective date of the
11 standards established under section 2701(a)
12 may not be canceled for nonpayment if the pol-
13 icy holder is determined by a long-term care
14 provider, physician or other health care pro-
15 vider, independent of the issuer of the policy, to
16 be cognitively or mentally incapacitated so as to
17 not make payments in a timely manner.

18 “(B) REINSTATEMENT.—A long-term care
19 policy shall include a provision that provides for
20 the reinstatement of such coverage, in the event
21 of lapse, if the insurer is provided with proof of
22 cognitive or mental incapacitation. Such rein-
23 statement option shall remain available for a
24 period of not less than 5 months after termi-

1 nation and shall allow for the collection of past
2 due premium.

3 “(2) PERMITTED CANCELLATION.—A long-term
4 care insurance policy may be canceled under para-
5 graph (1) for nonpayment if—

6 “(A) the period of such nonpayment is in
7 excess of 30 days; and

8 “(B) notice of intent to cancel is provided
9 to the policyholder or designated representative
10 of the policy holder not less than 30 days prior
11 to such cancellation, except that notice may not
12 be provided until the expiration of 30 days after
13 a premium is due and unpaid.

14 Notice under this paragraph shall be deemed to have
15 been given as of 5 days after the mailing date.

16 **“SEC. 2715. BENEFIT STANDARDS.**

17 “(a) USE OF STANDARD DEFINITIONS AND TERMI-
18 NOLOGY, UNIFORM FORMAT, AND STANDARD BENE-
19 FITS.—Each long-term care insurance policy shall, with
20 respect to services, providers or facilities, pursuant to
21 standards established under section 2701(a)—

22 “(1) use uniform language and definitions, ex-
23 cept that such language and definitions may take
24 into account the differences between States with re-

1 spect to definitions and terminology used for long-
2 term care services and providers;

3 “(2) use a uniform format for presenting the
4 outline of coverage under such a policy; and

5 “(3) provide coverage for at least one standard
6 benefits package (of those developed by the NAIC)
7 that shall include the limitations on the amount of
8 payments per day and the lengths of covered stays
9 for nursing facility and home health care services;
10 as prescribed under guidelines issued by the NAIC and
11 periodically updated.

12 “(b) DISCLOSURE.—

13 “(1) OUTLINE OF COVERAGE.—

14 “(A) REQUIREMENT.—Each carrier that
15 sells or offers for sale a long-term care insur-
16 ance policy shall provide an outline of coverage
17 under such policy that meets the applicable
18 standards established pursuant to section
19 2701(a), complies with the requirements of sub-
20 paragraph (B), and is in a uniform format as
21 prescribed in guidelines issued by the NAIC
22 and periodically updated.

23 “(B) CONTENTS.—The outline of coverage
24 for each long-term care insurance policy shall
25 include at least the following:

1 “(i) A description of the principal
2 benefits and coverage under the policy.

3 “(ii) A statement of the principal ex-
4 clusions, reductions, and limitations con-
5 tained in the policy.

6 “(iii) A statement of the terms under
7 which the policy (or certificate) may be
8 continued in force or discontinued, the
9 terms for continuation or conversion, and
10 any reservation in the policy of a right to
11 change premiums.

12 “(iv) A statement, in bold face type
13 on the face of the document in language
14 that is understandable to an average indi-
15 vidual, that the outline of coverage is a
16 summary only, not a contract of insurance,
17 and that the policy (or master policy) con-
18 tains the contractual provisions that gov-
19 ern, except that such summary shall sub-
20 stantially and accurately reflect the con-
21 tents of the policy or the master policy.

22 “(v) A description of the terms, speci-
23 fied in section 2717, under which a policy
24 or certificate may be returned and pre-
25 mium refunded.

1 “(vi) Information on national average
2 costs for nursing facility and home health
3 care and information (in graphic form) on
4 the relationship of the value of the benefits
5 provided under the policy to such national
6 average costs and State average costs,
7 where available.

8 “(vii) A statement of the percentage
9 limit on annual premium increases that is
10 provided under the policy pursuant to this
11 section.

12 “(2) CERTIFICATES.—A certificate issued pur-
13 suant to a group long-term care insurance policy
14 shall include—

15 “(A) a description of the principal benefits
16 and coverage provided in the policy;

17 “(B) a statement of the principal exclu-
18 sions, reductions, and limitations contained in
19 the policy; and

20 “(C) a statement that the group master
21 policy determines governing contractual provi-
22 sions.

23 “(3) LONG-TERM CARE AS PART OF LIFE IN-
24 SURANCE.—In the case of a long-term care insur-
25 ance policy issued as a part of, or a rider on, a life

1 insurance policy, at the time of policy delivery there
2 shall be provided a policy summary that includes—

3 “(A) an explanation of how the long-term
4 care benefits interact with other components of
5 the policy (including deductions from death
6 benefits);

7 “(B) an illustration of the amount of bene-
8 fits, the length of benefit, and the guaranteed
9 lifetime benefits (if any) for each covered per-
10 son; and

11 “(C) any exclusions, reductions, and limi-
12 tations on benefits of long-term care.

13 “(4) ADDITIONAL INFORMATION.—The NAIC
14 shall develop recommendations with respect to in-
15 forming consumers of the long-term economic viabil-
16 ity of carriers issuing long-term care insurance poli-
17 cies.

18 “(c) LIMITING CONDITIONS ON BENEFITS; MINIMUM
19 BENEFITS.—

20 “(1) IN GENERAL.—A long-term care insurance
21 policy may not condition or limit eligibility—

22 “(A) for benefits for a type of services to
23 the need for or receipt of any other services;

24 “(B) for any benefit on the medical neces-
25 sity for such benefit;

1 “(C) for benefits furnished by licensed or
2 certified providers in compliance with conditions
3 which are in addition to those required for li-
4 censure or certification under State law, except
5 that if no State licensure or certification laws
6 exists, in compliance with qualifications devel-
7 oped by the NAIC; or

8 “(D) for residential care (if covered under
9 the policy) only—

10 “(i) to care provided in facilities
11 which provide a higher level of care; or

12 “(ii) to care provided in facilities
13 which provide for 24-hour or other nursing
14 care not required in order to be licensed by
15 the State.

16 “(2) HOME HEALTH CARE OR COMMUNITY-
17 BASED SERVICES.—If a long-term care insurance
18 policy provides benefits for the payment of specified
19 home health care or community-based services, the
20 policy—

21 “(A) may not limit such benefits to serv-
22 ices provided by registered nurses or licensed
23 practical nurses;

24 “(B) may not require benefits for such
25 services to be provided by a nurse or therapist

1 that can be provided by a home health aide or
2 licensed or certified home care worker, except
3 that if no State licensure or certification laws
4 exists, in compliance with qualifications devel-
5 oped by the NAIC;

6 “(C) may not limit such benefits to serv-
7 ices provided by agencies or providers certified
8 under title XVIII of the Social Security Act;
9 and

10 “(D) must provide, at a minimum, benefits
11 for personal care services (including home
12 health aide and home care worker services as
13 defined by the NAIC) home health services,
14 adult day care, and respite care in an individ-
15 ual’s home or in another setting in the commu-
16 nity, or any of these benefits on a respite care
17 basis.

18 “(3) NURSING FACILITY SERVICES.—If a long-
19 term care insurance policy provides benefits for the
20 payment of specified nursing facility services, the
21 policy must provide such benefits with respect to all
22 nursing facilities (as defined in section 1919(a) of
23 the Social Security Act or until such time as subse-
24 quently provided for by the NAIC in establishing

1 uniform language and definitions under section
2 2715(a)(1)) in the State.

3 “(4) PER DIEM POLICIES.—

4 “(A) DEFINITION.—For purposes of this
5 title, the term ‘per diem long-term care insur-
6 ance policy’ means a long-term care insurance
7 policy (or certificate under a group long-term
8 care insurance policy) that provides for benefit
9 payments on a periodic basis due to cognitive
10 impairment or loss of functional capacity with-
11 out regard to the expenses incurred or services
12 rendered during the period to which the pay-
13 ments relate.

14 “(B) LIMITATION.—No per diem long-term
15 care insurance policy (or certificate) may condi-
16 tion or otherwise exclude benefit payments
17 based on the receipt of any type of nursing fa-
18 cility, home health care or community-based
19 services.

20 “(d) PROHIBITION OF DISCRIMINATION.—A long-
21 term care insurance policy may not treat benefits under
22 the policy in the case of an individual with Alzheimer’s
23 disease, with any related progressive degenerative demen-
24 tia of an organic origin, with any organic or inorganic
25 mental illness, or with mental retardation or any other

1 cognitive or mental impairment differently from an indi-
2 vidual having another medical condition for which benefits
3 may be made available.

4 “(e) LIMITATION ON USE OF PREEXISTING CONDI-
5 TION LIMITS.—

6 “(1) INITIAL ISSUANCE.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), a long-term care insurance policy
9 may not exclude or condition benefits based on
10 a medical condition for which the policyholder
11 received treatment or was otherwise diagnosed
12 before the issuance of the policy.

13 “(B) 6-MONTH LIMIT.—

14 “(i) IN GENERAL.—No long-term care
15 insurance policy or certificate issued under
16 this title shall utilize a definition of ‘pre-
17 existing condition’ that is more restrictive
18 than the following: The term ‘preexisting
19 condition’ means a condition for which
20 medical advice or treatment was rec-
21 ommended by, or received from a provider
22 of health care services, within 6 months
23 preceding the effective date of coverage of
24 an insured individual.

1 “(ii) PROHIBITION ON EXCLUSION OF
2 COVERAGE.—No long-term care insurance
3 policy or certificate may exclude coverage
4 for a loss or confinement that is the result
5 of a preexisting condition unless such loss
6 or confinement begins within 6 months fol-
7 lowing the effective date of the coverage of
8 the insured individual.

9 “(2) REPLACEMENT POLICIES.—If a long-term
10 care insurance policy replaces another long-term
11 care insurance policy, the issuer of the replacing pol-
12 icy shall waive any time periods applicable to pre-
13 existing conditions, waiting period, elimination peri-
14 ods and probationary periods in the new policy for
15 similar benefits to the extent such time was spent
16 under the original policy.

17 “(f) ELIGIBILITY FOR BENEFITS.—

18 “(1) LONG-TERM CARE POLICIES.—Each long-
19 term care insurance policy shall—

20 “(A) describe the level of benefits available
21 under the policy; and

22 “(B) specify in clear, understandable
23 terms, the level (or levels) of physical, cognitive,
24 or mental impairment required in order to re-
25 ceive benefits under the policy.

1 “(2) FUNCTIONAL ASSESSMENT.—In order to
2 submit a claim under any long-term care insurance
3 policy, each claimant shall have a professional func-
4 tional assessment of his or her physical, cognitive,
5 and mental abilities. Such initial assessment shall be
6 conducted by an individual or entity, meeting the
7 qualifications established by the NAIC to assure the
8 professional competence and credibility of such indi-
9 vidual or entity and that such individual meets any
10 applicable State licensure and certification require-
11 ments. The individual or entity conducting such as-
12 sessment may not control, or be controlled by, the
13 issuer of the policy. For purposes of this paragraph
14 and paragraph (4), the term ‘control’ means the di-
15 rect or indirect possession of the power to direct the
16 management and policies of a person. Control is pre-
17 sumed to exist, if any person directly or indirectly,
18 owns, controls, holds with the power to vote, or
19 holds proxies representing 10 percent of the voting
20 securities of another person.

21 “(3) CLAIMS REVIEW.—Except as provided in
22 paragraph (4), each long-term care insurance policy
23 shall be subject to final claims review by the carrier
24 pursuant to the terms of the long-term care insur-
25 ance policy.

1 “(4) APPEALS PROCESS.—

2 “(A) IN GENERAL.—Each long-term care
3 insurance policy shall provide for a timely and
4 independent appeals process, meeting standards
5 established by the NAIC, for individuals who
6 dispute the results of the claims review, con-
7 ducted under paragraph (3), of the claimant’s
8 functional assessment, conducted under para-
9 graph (2).

10 “(B) INDEPENDENT ASSESSMENT.—An
11 appeals process under this paragraph shall in-
12 clude, at the request of the claimant, an inde-
13 pendent assessment of the claimant’s physical,
14 cognitive or mental abilities.

15 “(C) CONDUCT.—An independent assess-
16 ment under subparagraph (B) shall be con-
17 ducted by an individual or entity meeting the
18 qualifications established by the NAIC to as-
19 sure the professional competence and credibility
20 of such individual or entity and any applicable
21 State licensure and certification requirements
22 and may not be conducted—

23 “(i) by an individual who has a direct
24 or indirect significant or controlling inter-

1 est in, or direct affiliation or relationship
2 with, the issuer of the policy;

3 “(ii) by an entity that provides serv-
4 ices to the policyholder or certificateholder
5 for which benefits are available under the
6 long-term care insurance policy; or

7 “(iii) by an individual or entity in con-
8 trol of, or controlled by, the issuer of the
9 policy.

10 “(5) STANDARD ASSESSMENTS.—Not later than
11 2 years after the date of enactment of this title, the
12 advisory committee established under section
13 2701(d) shall recommend uniform needs assessment
14 mechanisms for the determination of eligibility for
15 benefits under such assessments.

16 “(g) INFLATION PROTECTION.—

17 “(1) OPTION TO PURCHASE.—A carrier may
18 not offer a long-term care insurance policy unless
19 the carrier also offers to the proposed policyholder,
20 including each group policyholder, the option to pur-
21 chase a policy that provides for increases in benefit
22 levels, with benefit maximums or reasonable dura-
23 tions that are meaningful, to account for reasonably
24 anticipated increases in the costs of long-term care
25 services covered by the policy. A carrier may not

1 offer to a policyholder an inflation protection feature
2 that is less favorable to the policyholder than one of
3 the following:

4 “(A) With respect to policies that provide
5 for automatic periodic increases in benefits, the
6 policy provides for an annual increase in bene-
7 fits in a manner so that such increases are
8 computed annually at a rate of not less than 5
9 percent.

10 “(B) With respect to policies that provide
11 for periodic opportunities to elect an increase in
12 benefits, the policy guarantees that the insured
13 individual will have the right to periodically in-
14 crease the benefit levels under the policy with-
15 out providing evidence of insurability or health
16 status so long as the option for the previous pe-
17 riod was not declined. The amount of any such
18 additional benefit may not be less than the dif-
19 ference between—

20 “(i) the existing policy benefit; and

21 “(ii) such existing benefit compounded
22 annually at a rate of at least 5 percent for
23 the period beginning on the date on which
24 the existing benefit is purchased and ex-

1 tending until the year in which the offer of
2 increase is made.

3 “(C) With respect to service benefit poli-
4 cies, the policy covers a specified percentage of
5 the actual or reasonable charges and does not
6 include a maximum specified indemnity amount
7 or limit.

8 “(2) EXCEPTION.—The requirements of para-
9 graph (1) shall not apply to life insurance policies or
10 riders containing accelerated long-term care benefits.

11 “(3) REQUIRED INFORMATION.—Carriers shall
12 include the following information in or together with
13 the outline of coverage provided under this title:

14 “(A) A graphic comparison of the benefit
15 levels of a policy that increases benefits over the
16 policy period with a policy that does not in-
17 crease benefits. Such comparison shall show
18 benefit levels over not less than a 20-year pe-
19 riod.

20 “(B) Any expected premium increases or
21 additional premiums required to pay for any
22 automatic or optional benefit increases, whether
23 the individual who purchases the policy obtains
24 the inflation protection initially or whether such

1 individual delays purchasing such protection
2 until a future time.

3 “(4) CONTINUATION OF PROTECTION.—Infla-
4 tion protection benefit increases under this sub-
5 section under a policy that contains such protection
6 shall continue without regard to an insured’s age,
7 claim status or claim history, or the length of time
8 the individual has been insured under the policy.

9 “(5) CONSTANT PREMIUM.—An offer of infla-
10 tion protection under this subsection that provides
11 for automatic benefit increases shall include an offer
12 of a premium that the carrier expects to remain con-
13 stant. Such offer shall disclose in a conspicuous
14 manner that the premium may change in the future
15 unless the premium is guaranteed to remain con-
16 stant.

17 “(6) REJECTION.—Inflation protection under
18 this subsection shall be included in a long-term care
19 insurance policy unless a carrier obtains a written
20 rejection of such protection signed by the policy-
21 holder.

22 **“SEC. 2716. NONFORFEITURE.**

23 “(a) IN GENERAL.—Each long-term care insurance
24 policy (or certificate) shall provide that if the policy lapses
25 after the policy has been in effect for a minimum period

1 (specified under the standards under section 2701(a)), the
2 policy will provide, without payment of any additional pre-
3 miums, nonforfeiture benefits as determined appropriate
4 by the NAIC.

5 “(b) ESTABLISHMENT OF STANDARDS.—The stand-
6 ards under section 2701(a) shall provide that the percent-
7 age or amount of benefits under subsection (a) must in-
8 crease based upon the policyholder’s equity in the policy.

9 **“SEC. 2717. LIMIT OF PERIOD OF CONTESTABILITY AND**
10 **RIGHT TO RETURN.**

11 “(a) CONTESTABILITY.—A carrier may not cancel or
12 renew a long-term care insurance policy or deny a claim
13 under the policy based on fraud or material misrepresenta-
14 tion relating to the issuance of the policy unless notice
15 of such fraud or material misrepresentation is provided
16 within a time period to be determined by the NAIC.

17 “(b) RIGHT TO RETURN.—Each applicant for a long-
18 term care insurance policy shall have the right to return
19 the policy (or certificates) within 30 days of the date of
20 its delivery (and to have the premium refunded) if, after
21 examination of the policy or certificate, the applicant is
22 not satisfied for any reason.

1 **“SEC. 2718. CIVIL MONEY PENALTY.**

2 “(a) CARRIER.—Any carrier, association or its sub-
3 sidiary that sells or offers for sale a long-term care insur-
4 ance policy and that—

5 “(1) fails to make a refund in accordance with
6 section 2713(a);

7 “(2) fails to transmit a policy in accordance
8 with section 2713(b);

9 “(3) fails to provide, make available, or report
10 information in accordance with subsections (c) or (d)
11 of section 2713;

12 “(4) provides a commission or compensation in
13 violation of section 2713(e);

14 “(5) fails to provide an outline of coverage in
15 violation of section 2715(b)(1); or

16 “(6) issues a policy without obtaining certain
17 information in violation of section 2715(f);

18 is subject to a civil money penalty of not to exceed \$25,000
19 for each such violation.

20 “(b) AGENTS.—Any agent that sells or offers for sale
21 a long-term care insurance policy and that—

22 “(1) fails to make a refund in accordance with
23 section 2713(a);

24 “(2) fails to transmit a policy in accordance
25 with section 2713(b);

1 “(3) fails to provide, make available, or report
2 information in accordance with subsections (c) or (d)
3 of section 2713;

4 “(4) fails to provide an outline of coverage in
5 violation of section 2715(b)(1); or

6 “(5) issues a policy without obtaining certain
7 information in violation of section 2715(f);

8 is subject to a civil money penalty of not to exceed \$15,000
9 for each such violation.

10 “PART C—LONG-TERM CARE INSURANCE POLICIES,

11 DEFINITION AND ENDORSEMENTS

12 **“SEC. 2721. LONG-TERM CARE INSURANCE POLICY DE-**
13 **FINED.**

14 “(a) IN GENERAL.—As used in this section, the term
15 ‘long-term care insurance policy’ means any insurance pol-
16 icy, rider or certificate advertised, marketed, offered or de-
17 signed to provide coverage for not less than 12 consecutive
18 months for each covered person on an expense incurred,
19 indemnity prepaid or other basis, for one or more nec-
20 essary diagnostic, preventive, therapeutic, rehabilitative,
21 maintenance or personal care services, provided in a set-
22 ting other than an acute care unit of a hospital. Such term
23 includes—

24 “(1) group and individual annuities and life in-
25 surance policies, riders or certificates that provide

1 directly, or that supplement long-term care insur-
2 ance; and

3 “(2) a policy, rider or certificates that provides
4 for payment of benefits based on cognitive impair-
5 ment or the loss of functional capacity.

6 “(b) ISSUANCE.—Long-term care insurance policies
7 may be issued by—

8 “(1) carriers;

9 “(2) fraternal benefit societies;

10 “(3) nonprofit health, hospital, and medical
11 service corporations;

12 “(4) prepaid health plans;

13 “(5) health maintenance organizations; or

14 “(6) any similar organization to the extent they
15 are otherwise authorized to issue life or health insur-
16 ance.

17 “(c) POLICIES EXCLUDED.—The term ‘long-term
18 care insurance policy’ shall not include any insurance pol-
19 icy, rider or certificate that is offered primarily to provide
20 basic Medicare supplement coverage, basic hospital ex-
21 pense coverage, basic medical-surgical expense coverage,
22 hospital confinement indemnity coverage, major medical
23 expense coverage, disability income or related asset-protec-
24 tion coverage, accident only coverage, specified disease or
25 specified accident coverage, or limited benefit health cov-

1 erage. With respect to life insurance, such term shall not
2 include life insurance policies, riders or certificates that
3 accelerate the death benefit specifically for one or more
4 of the qualifying events of terminal illness, medical condi-
5 tions requiring extraordinary medical intervention, or per-
6 manent institutional confinement, and that provide the op-
7 tion of a lump-sum payment for those benefits and in
8 which neither the benefits nor the eligibility for the bene-
9 fits is conditioned upon the receipt of long-term care.

10 “(d) APPLICATIONS.—Notwithstanding any other
11 provision of this title, this title shall apply to any product
12 advertised, marketed or offered as a long-term insurance
13 policy, rider or certificate.

14 **“SEC. 2722. CODE OF CONDUCT WITH RESPECT TO EN-**
15 **DORSEMENTS.**

16 “Not later than 1 year after the date of enactment
17 of this title the NAIC shall issue guidelines that shall
18 apply to organizations and associations, other than em-
19 ployers and labor organizations that do not accept com-
20 pensation, and their subsidiaries that provide endorse-
21 ments of long-term care insurance policies, or that permit
22 such policies to be offered for sale through the organiza-
23 tion or association. Such guidelines shall include at mini-
24 mum the following:

1 “(1) In endorsing or selling long-term care in-
2 surance policies, the primary responsibility of an or-
3 ganization or association shall be to educate their
4 members concerning such policies and assist such
5 members in making informed decisions. Such organi-
6 zations and associations may not function primarily
7 as sales agents for insurance companies.

8 “(2) Organizations and associations shall pro-
9 vide objective information regarding long-term care
10 insurance policies sold or endorsed by such organiza-
11 tions and associations to ensure that members of
12 such organizations and associations have a balanced
13 and complete understanding of both the strengths
14 and weaknesses of the policies that are being en-
15 dorsed or sold.

16 “(3) Organizations and associations selling or
17 endorsing long-term care insurance policies shall dis-
18 close in marketing literature provided to their mem-
19 bers concerning such policies the manner in which
20 such policies and the insurance company issuing
21 such policies were selected. If the organization or as-
22 sociation and the insurance company have interlock-
23 ing directorates, the organization or association shall
24 disclose such fact to their members.

1 “(4) Organizations and associations selling or
2 endorsing long-term care insurance policies shall dis-
3 close in marketing literature provided to their mem-
4 bers concerning such policies the nature and amount
5 of the compensation arrangements (including all
6 fees, commissions, administrative fees and other
7 forms of financial support that the organization or
8 association receives) from the endorsement or sale of
9 the policy to its members.

10 “(5) The Boards of Directors of organizations
11 and associations selling or endorsing long-term care
12 insurance policies, if such organizations and associa-
13 tions have a Board of Directors, shall review and ap-
14 prove such insurance policies, the compensation ar-
15 rangements and the marketing materials used to
16 promote sales of such policies.

17 “PART D—MISCELLANEOUS PROVISIONS

18 **“SEC. 2731. FUNDING FOR LONG-TERM CARE INSURANCE**
19 **INFORMATION, COUNSELING, AND ASSIST-**
20 **ANCE.**

21 “(a) IN GENERAL.—The Secretary, acting through
22 the Public Health Service, may award grants to States,
23 and national organizations with demonstrated experience
24 in long-term care insurance, for the establishment of pro-
25 grams to provide information, counseling, and assistance

1 relating to the procurement of adequate and appropriate
2 long-term care insurance.

3 “(b) APPLICATION.—To be eligible to receive a grant
4 under subsection (a), a State or national organization
5 shall prepare and submit to the Secretary an application
6 at such time, in such manner, and containing such infor-
7 mation as the Secretary may require, including a descrip-
8 tion of the program for which the State or organization
9 intends to use the amounts provided under the grant.

10 “(c) AUTHORIZATION OF APPROPRIATIONS.—

11 “(1) IN GENERAL.—There are authorized to be
12 appropriate for grants to States under subsection
13 (a), \$10,000,000 for each of the fiscal years 1994
14 through 1996.

15 “(2) NATIONAL ORGANIZATIONS.—There are
16 authorized to be appropriate for grants to national
17 organizations under subsection (a), \$1,000,000 for
18 each of the fiscal years 1994 through 1996.

19 **“SEC. 2732. DEFINITIONS.**

20 “As used in this title:

21 “(1) AGENT.—The term ‘agent’ means—

22 “(A) prior to 2 years after the date of en-
23 actment of this Act, an individual who sells or
24 offers for sale a long-term care insurance policy
25 subject to the requirements of this title and is

1 licensed or required to be licensed under State
2 law for such purpose; and

3 “(B) after the date referred to in subpara-
4 graph (A), an individual who meets the training
5 and certification requirements established under
6 section 2712(f).

7 “(2) ASSOCIATION.—The term ‘association’ in-
8 cludes the association and its subsidiaries.

9 “(3) CARRIER.—The term ‘carrier’ means any
10 person that offers a health benefit plan, whether
11 through insurance or otherwise, including a licensed
12 insurance company, a prepaid hospital or medical
13 service plan, a health maintenance organization, a
14 self-insured carrier, a reinsurance carrier, and a
15 multiple employer welfare arrangement (a combina-
16 tion of employers associated for the purpose of pro-
17 viding health benefit plan coverage for their employ-
18 ees).”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Sections 2701 through 2714 of the Public
21 Health Service Act (42 U.S.C. 300cc through
22 300cc–15) are redesignated as sections 2801
23 through 2814, respectively.

24 (2)(A) Sections 465(f) and 497 of such Act (42
25 U.S.C. 286(f) and 289(f)) are amended by striking

- 1 out “2701” each place that such appears and insert-
- 2 ing in lieu thereof “2801”.

○

- 3 HR 3651 IH—2
- 4 HR 3651 IH—3
- 5 HR 3651 IH—4
- 6 HR 3651 IH—5
- 7 HR 3651 IH—6